

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-23990-037-IV
PERMIT NO. 836-0253
NON-COMPLIANCE NO. 41-0780
FAILURE TO ABATE CESSATION ORDER NO. 04-0996

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

SECRETARY'S FINAL ORDER

NALR COAL CORPORATION

DEFENDANT

* * * * *

THIS MATTER is before the Secretary upon the Report and Recommended Order of the Hearing Officer, and the Secretary having considered the Report and Recommendation and any exceptions and responses, and being fully and sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommendation entered in the record on [NOVEMBER 3, 1999], 1999, is **ADOPTED** and is incorporated by reference and made a part herein, as if set forth verbatim.

2. The Defendant, NALR Coal Corporation **HAS WAIVED ALL RIGHTS** to a formal hearing to contest this matter.

3. As evidenced by the Secretary's Order in File No. PAC-23990-IV, the Defendant **HAS VIOLATED** the conditions of Surface Coal Mining and Reclamation Operations Permit No. 836-0253, the Kentucky Surface Mining Laws and the regulations promulgated pursuant thereto, as cited in Notice of Non-Compliance and Order for Remedial Measures No. 41-0780 and Order for Cessation and Immediate Compliance No. 04-0996.

4. Permit No. 836-0253 is **REVOKED**.

5. The Performance Bonds for the permit, secured by Bond Pool Bond Nos. BP-9003223, with a remaining balance of sixteen thousand seven hundred dollars (\$16,700) and BP-9003243, in the amount of five thousand dollars (\$5,000), issued by the Kentucky Bond Pool, as surety and NALR as principal in the total amount of twenty-one thousand seven hundred dollars (\$21,700) **IS FORFEITED** to the Natural Resources and Environmental Protection Cabinet.

6. The Defendant has **FAILED TO ABATE** the violations set forth in the Notice of Non-Compliance and Order for Remedial Measures cited above in paragraph 3, and the Order for Cessation and Immediate Compliance also cited above in paragraph 3.

7. The Defendant **SHALL IMMEDIATELY PERFORM ALL REMEDIAL MEASURES AND ABATE ALL VIOLATIONS** cited in the above-referenced Notice of Non-Compliance and Cessation Order for Permit No. 836-0253 and shall continue the performance of said remedial measures until all violations are abated and shall perform all necessary reclamation to achieve the post-mining land use.

8. The Defendant **IS INELIGIBLE** to receive another permit, begin another mining operation or have suspended permit or operations reinstated, until all of the Kentucky Surface Mining Laws requirements have been met.

9. This is a **FINAL AND APPEALABLE** Order.

SO ORDERED this the _____ day of _____, 1999.

//S// 12/8/99
JAMES E. BICKFORD, SECRETARY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a final order of the Secretary resulting from a hearing may obtain a review of the final order by filing in circuit court a petition for review. Such petition must be filed within thirty (30) days after the entry or rendition of the final order, and a copy of the petition must be served upon the Cabinet.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 1999, a true and accurate copy of the foregoing SECRETARY'S FINAL ORDER was mailed by first-class mail, postage pre-paid, to the following:

NALR COAL CORPORATION
364 BRANHAM HEIGHTS
PIKEVILLE, KENTUCKY 41501-6703

and hand-delivered to:

Hon. Greg Higgins
Office of Legal Services
Natural Resources and
Environmental Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRIBUTION:

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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

**HEARING OFFICER'S REPORT AND
RECOMMENDED SECRETARY'S ORDER**

NALR COAL CORPORATION

DEFENDANT

* * * * *

THIS MATTER is before the undersigned following the failure of the Defendant, NALR Coal Corporation. ("NALR" or "Defendant"), to appear at a Show Cause Hearing scheduled for September 28, 1999. Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law and Recommendations:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On July 14, 1999, the Natural Resources and Environmental Protection Cabinet filed an Administrative Complaint against NALR in which it sought, among other things, the revocation of Permit No. 836-0253 and the forfeiture of the performance bonds associated with the permit. The performance bonds are secured by Bond Pool Bond Nos. BP-9003223, with a remaining balance of sixteen thousand seven hundred dollars (\$16,700) and BP-9003243, in the amount of five thousand dollars (\$5,000), issued by the Kentucky Bond Pool as surety and NALR as principal and is presently encumbered in the total amount of twenty-one thousand seven hundred dollars (\$21,700). In addition, the Cabinet alleged in its Administrative Complaint that the fact of violation cited in the above-referenced Notice of Non-Compliance and Cessation Order had been affirmed by the Secretary in a Final Order entered on May 20, 1999, in

File No. PAC-23990-IV and that as of the date the Administrative Complaint was filed, the violations had not been abated.

2. On July 15, 1999, the Office of Administrative Hearings issued and served on the address supplied in the Administrative Complaint, which was the address given by NALR in its surface mining permit and subsequent updates thereto, a Summons and Order in which this matter was assigned to this Hearing Officer and in which NALR was ordered to appear for a Prehearing Conference on August 23, 1999, at 1:30 p.m. EST.

3. As evidenced by the return of the Return Receipt Card (green card) in the files maintained by the Office of Administrative Hearings, the Summons and Order were sent to Defendant at the permit address by certified mail, postage prepaid and return receipt requested on July 15, 1999, and accepted by Mrs. Carol Raschella on July 21, 1999.

4. In light of the fact of the foregoing, service of the Administrative Complaint and Administrative Summons and Order was accomplished in conformity with the Cabinet's regulations governing service of an Administrative Summons and was therefore proper. 405 KAR 7:091, Section 5(1)(c).

5. The Defendant failed to file an Answer or responsive pleading as required by 405 KAR 7:092, Section 5(3)(b).

6. On August 23, 1999, the undersigned conducted a Prehearing Conference as scheduled in the Summons and Order. Hon. Greg Higgins appeared for the Cabinet. NALR did not appear as required under the Administrative Summons and Order. Since NALR was not present, the Cabinet requested the Hearing Officer to enter an Order for NALR to appear and show cause as to why it should not be held in default.

7. On August 24, 1999, a Show Cause Order was entered and served ordering the Defendant to appear on September 28, 1999, and show cause why it should not be deemed to

have waived its right to an administrative hearing. The Scheduling Order for Show Cause was properly served on the Defendant in conformity with the Cabinet's regulations governing service of documents or other pleadings. 400 KAR 1:030, Section 2.

8. On August 28, 1999, the undersigned conducted a Show Cause Hearing as scheduled in the Scheduling Order for Show Cause of August 24, 1999. Hon. Greg Higgins appeared for the Cabinet. No one appeared for the Defendant to show cause why the Defendant should not be deemed to have waived its right to a hearing under 405 KAR 7:092, Section 5.

9. Under the provisions of 405 KAR 7:092, Section 5, the Defendant has admitted the allegations made by the Cabinet in its Administrative Complaint and failed to demonstrate why a Secretary's Order adverse to its interest should not be entered in accordance with the provisions of 405 KAR 7:092 granting the Cabinet the relief it requested in its Administrative Complaint.

II. RECOMMENDATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary enter the attached recommended Order granting the Cabinet the relief requested in the Administrative Complaint.

SO RECOMMENDED this the _____ day of _____, 1999.

_____/S// 11/3/99_____
JANET C. THOMPSON

HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
35-36 Fountain Place
Frankfort, Kentucky 40601
(502) 564-7312 telephone
(502) 564-4973 fax

EXCEPTION AND RESPONSE RIGHTS

Pursuant to KRS 350.0301, any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. Any party may file a response to the any exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this Report, any exceptions, any responses, and the recommended order and decide the case.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 1999, a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDED SECRETARY'S ORDER was mailed by first-class mail, postage pre-paid, to the following:

NALR COAL CORPORATION
364 BRANHAM HEIGHTS
PIKEVILLE, KENTUCKY 41501-6703

and hand-delivered to:

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